

**Introduced by Senator Leno**  
(Principal coauthor: Assembly Member Skinner)

February 6, 2014

---

An act to add Section 22761 to the Business and Professions Code, relating to mobile communications devices.

LEGISLATIVE COUNSEL'S DIGEST

SB 962, as introduced, Leno. Advanced mobile communications devices.

Existing law regulates various business activities and practices, including the sale of telephones.

This bill would require that any advanced mobile communications device, as defined, that is sold in California on or after January 1, 2015, include a technological solution, which may consist of software, hardware, or both software and hardware, that can render inoperable the essential features of the device, as defined, when the device is not in the possession of the rightful owner. The bill would require that the technological solution be able to withstand a hard reset, as defined. The bill would prohibit the sale of an advanced mobile communications device in California without the technological solution being enabled, but would authorize the rightful owner to affirmatively elect to disable the technological solution after sale. The bill would prohibit a provider of commercial mobile radio service, as defined, from including any term or condition in a service contract with an end-use consumer with an address within the state that requires or encourages the consumer or rightful owner to disable the technological solution that renders the consumer's smartphone or other advanced communications device useless if stolen. The bill would make a violation of the bill's

requirements subject to a civil penalty of not less than \$500, nor more than \$2,500, for each violation.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) According to the Federal Communications Commission,  
4 one in three robberies in the United States involve the theft of a  
5 mobile communications device, making it the number one property  
6 crime in the country. Many of these robberies often turn violent  
7 with some resulting in the loss of life.

8 (b) Consumer Reports projects that 1.6 million Americans were  
9 victimized for their smartphones in 2012.

10 (c) According to the New York Times, 113 smartphones are  
11 lost or stolen every minute in the United States.

12 (d) According to the Office of the District Attorney for the City  
13 and County of San Francisco, in 2012, more than 50 percent of all  
14 robberies in San Francisco involved the theft of a mobile  
15 communications device.

16 (e) Thefts of smartphones in Los Angeles increased 12 percent  
17 in 2012, according to the Los Angeles Police Department.

18 (f) According to press reports, the international trafficking of  
19 stolen smartphones by organized criminal organizations has grown  
20 exponentially in recent years because of how profitable the trade  
21 has become.

22 (g) Replacement of lost and stolen mobile communications  
23 devices was an estimated thirty-billion-dollar (\$30,000,000,000)  
24 business in 2012 according to studies conducted by mobile  
25 communications security experts. Additionally, industry  
26 publications indicate that the four largest providers of commercial  
27 mobile radio services made an estimated seven billion eight  
28 hundred million dollars (\$7,800,000,000) from theft and loss  
29 insurance products in 2013.

30 (h) Technological solutions that render stolen mobile  
31 communications devices useless already exist, but the industry has  
32 been slow to adopt them.

1 (i) In order to be effective, these technological solutions need  
2 to be ubiquitous, as thieves cannot distinguish between those  
3 mobile communications devices that have the solutions enabled  
4 and those that do not. As a result, the technological solution should  
5 be able to withstand a hard reset or operating system downgrade,  
6 and be enabled by default, with consumers being given the option  
7 to affirmatively elect to disable this protection.

8 (j) Manufacturers of advanced mobile communications devices  
9 and commercial mobile radio service providers have a  
10 responsibility to ensure their customers are not targeted as a result  
11 of purchasing their products and services.

12 (k) It is the intent of the Legislature to require all smartphones  
13 and other advanced mobile communications devices offered for  
14 sale in California to come with a technological solution enabled,  
15 in order to deter theft and protect consumers.

16 (l) It is the further intent of the Legislature to prohibit any term  
17 or condition in a service contract between a customer and a  
18 commercial mobile radio service provider that requires or  
19 encourages the customer to disable the technological solution that  
20 renders the customer's smartphone or other advanced  
21 communications device useless if stolen.

22 SEC. 2. Section 22761 is added to the Business and Professions  
23 Code, to read:

24 22761. (a) For purposes of this section, the following terms  
25 have the following meanings:

26 (1) "Advanced mobile communications device" means an  
27 electronic device that is regularly hand held when operated that  
28 enables the user to engage in voice communications using mobile  
29 telephony service, Voice over Internet Protocol, or Internet Protocol  
30 enabled service, as those terms are defined in Sections 224.4 and  
31 239 of the Public Utilities Code, and to connect to the Internet,  
32 and includes what are commonly known as smartphones and  
33 tablets.

34 (2) "Commercial mobile radio service" means "commercial  
35 mobile service," as defined in subsection (d) of Section 332 of  
36 Title 47 of the United States Code and as further specified by the  
37 Federal Communications Commission in Parts 20, 22, 24, and 25  
38 of Title 47 of the Code of Federal Regulations, and includes  
39 "mobile satellite telephone service" and "mobile telephony

1 service,” as those terms are defined in Section 224.4 of the Public  
2 Utilities Code.

3 (3) “Essential features” of an advanced mobile communications  
4 device include the ability to use the device for voice  
5 communications and the ability to connect to the Internet, including  
6 the ability to access and use mobile software applications  
7 commonly known as “apps.”

8 (4) “Hard reset” means the restoration of an advanced mobile  
9 communications device to the state it was in when it left the  
10 factory, and refers to any act of returning a device to that state,  
11 including processes commonly termed a factory reset or master  
12 reset.

13 (5) “Sold in California” means that the advanced mobile  
14 communications device is sold at retail, and not for resale, from a  
15 location within the state, or the advanced mobile communications  
16 device is sold and shipped to an end-use consumer at an address  
17 within the state.

18 (b) (1) Any advanced mobile communications device that is  
19 sold in California on or after January 1, 2015, shall include a  
20 technological solution that can render the essential features of the  
21 device inoperable when the device is not in the possession of the  
22 rightful owner. A technological solution may consist of software,  
23 hardware, or a combination of both software and hardware, but  
24 shall be able to withstand a hard reset. No advanced mobile  
25 communications device may be sold in California without the  
26 technological solution enabled.

27 (2) The rightful owner of an advanced mobile communications  
28 device may affirmatively elect to disable the technological solution  
29 after sale. However, the physical acts necessary to disable the  
30 technological solution may only be performed by the end-use  
31 consumer or a person specifically selected by the end-use consumer  
32 to disable the technological solution and shall not be physically  
33 performed by any retail seller of the advanced mobile  
34 communications device.

35 (c) A provider of commercial mobile radio service shall not  
36 include a term or condition in a service contract with an end-use  
37 consumer with an address within the state that requires or  
38 encourages the consumer or rightful owner to disable the  
39 technological solution that renders the consumer’s smartphone or  
40 other advanced communications device useless if stolen.

1 (d) (1) A person or retail entity selling an advanced  
2 communications device in California in violation of subdivision  
3 (b) shall be subject to a civil penalty of not less than five hundred  
4 dollars (\$500), nor more than two thousand five hundred dollars  
5 (\$2,500), per device sold in California.

6 (2) A provider of commercial mobile radio service that includes  
7 a term or condition in a service contract with an end-use consumer  
8 with an address within the state in violation of subdivision (c) shall  
9 be subject to a civil penalty of not less than five hundred dollars  
10 (\$500), nor more than two thousand five hundred dollars (\$2,500),  
11 per service contract with an end-use consumer with an address  
12 within California.

O